

University of Dundee

## Natural Law and Vengeance

Giddens, Thomas

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# Natural Law and Vengeance: Jurisprudence on the Streets of Gotham

‘...Batman. He’s a criminal. I’m a cop. It’s that simple. But—’ [14: 70]

## 1. Introduction

What is Batman’s relationship with justice? This article will argue that Batman is allied with modern natural law in the way he relies upon reason to bring about his vision of ‘true justice’, operating as a force external to law. This vision of justice is a protective one, with Batman existing as a guardian—a force for resistance against the corruption of the state and the failures of the legal system. But alongside his rational means, Batman also employs violence as he moves beyond the boundaries of the civilised state into the dark and violent world outside law’s protection. He thus sacrifices his own safety to ensure the safety of others—he is a Dark Knight, a sentinel, fighting the nasty and brutish underworld of criminality in his effort to bring rational order to the world and protect the people of Gotham from criminal harm. This is Batman’s fight for justice, fuelled by a deeply private trauma: the murder of Bruce Wayne’s parents that set him on the path to vigilantism—a private desire for vengeance that Batman transcends. In navigating Batman’s jurisprudential dimensions, we will ultimately be reminded that private desires and motivations—phenomenal, living humans—are enfolded within the public structures of justice that work to deny those ‘living’ origins of action.

Jurisprudence and legal theory are to a large extent concerned with what can be termed ‘the law question’. Concerns such as what constitutes law, the nature of authority, the legitimate use of violence, social order and control, the line between public and private, and what law *should* be, are all (inter alia) caught up in this ‘law question’. In this essay, particular focus will be given to the general theory of natural law, to questions of the monopoly on legitimate uses of violence, and to the line between justice and vengeance, which is closely related to that between public and private. These issues will be examined through engagement with a selection of Batman comics. It may seem that critical use of such texts needs extensive justification, but legal theorists such as Willaim P. MacNeil [12] and Richard K. Sherwin [21] have amply demonstrated the rich jurisprudential worth of looking at the various texts of popular culture. And the human condition, as Ian Ward has said, is not only a ‘legal’ condition—and thus the wider raft of human culture and its texts become relevant to, and can enrich understanding of, the law question [see 27: 154]. Indeed, given the persistent substantive focus on the concerns of law and justice, on one level Batman can be read as an exercise in jurisprudence itself (albeit undertaken through an alternative medium to traditional legal texts). Moreover, as I have argued at length elsewhere specifically in relation to comics:

Exposing law's typically textual ways of knowing to alternative means of articulation [such as comics] not only challenges the automatic use of text as 'ideal' for the articulation of legal and moral issues, but enables engagement with a wider set of interacting knowledges that can help triangulate issues surrounding justice in a human world inhabited by sensual beings. [7: 108-109]

Indeed, the comics medium specifically has great analytical potential for legal studies in the way it traverses and transcends the complex boundaries of rational text in its blending of the visual, verbal, rational and aesthetic [7, see also 8].

The vast canon of Batman comics is impossible to survey in a single paper; accordingly the focus will be on three key texts: Batman's origin as told in Miller and Mazzucchelli's *Year One* [14], and the continuity that stems through the work of Loeb and Sale in *The Long Halloween* [11] and *Dark Victory* [10] (other examples are also mentioned). Discussion will first (Section 2) argue that Batman employs rational means to bring the 'broken' system in line with an idealised concept of justice, thus allying him with modern natural law. But Batman's methods are also violent and grounded in a desire for vengeance; thus discussion turns (Section 3) to consider the legitimate use of force in policing criminality—importantly considering the actions of private citizens outside the system—and the distinction between vengeance and justice that Batman traverses. Ultimately, it will be seen that Batman symbolises an idealised justice beyond human law, and at the same time transcends his own personal desires for vengeance in order to bring about this generalised ideal of the protection of Gotham's public. In this way, Batman acts as a complex force for resistance against the potential for injustice by the state whilst reminding us of the private origins of public action.

## **2. Batman and the Law Question**

In Chapter One of *The Long Halloween* [11: Ch 1], Jim Gordon (Commissioner of Gotham City Police Department), Harvey Dent (Gotham City District Attorney), and Batman have a night-time meeting on a Gotham rooftop. These three key characters can be read as symbolising the triumvirate of criminal justice: the police, the legal system, and the concept of justice, respectively. Dent and Gordon await Batman's arrival—the legal system (police and law) cannot operate until the system is imbued with the spirit of justice. When Batman arrives, Dent admits that he has 'come to appreciate our *mutual* friend [Batman]. And how he crosses a line we [Dent and Gordon]... *can't*' [11: Ch 1]. Batman's importance in the general project of bringing about justice is that he can go beyond the limits of strict legality. Indeed, as a vigilante, Batman *cannot* be legal: he is outside the law, beyond it, in conflict with it. But Batman may be free to achieve legitimate justice where law fails to do so.

However, there are limits to the extent Batman can be seen as 'legitimate', and hence that Gordon and Dent will permit Batman to be involved in their 'official' crime-fighting. Towards the end of their meeting, after discussing 'what needs to be done' about the current evil fuelling the corruption of Gotham—Carmino Falcone—Gordon clarifies the status of their activities and the limits of legitimacy. As a police officer, he reminds Dent and Batman

that they can ‘bend’ the rules, but not ‘break’ them. ‘Otherwise,’ he continues, ‘how are we different from *him* [Falcone]?’ [11: Ch 1]. Dent agrees, but the elephant on the rooftop is not acknowledged. Batman exists in a world of broken rules, outside legal sanction, committing violence, trespass and breaches of privacy in his fight for justice. The question is: what makes Gordon and Dent’s involvement with Batman acceptable? More specifically: what makes Batman’s rule-breaking different from the rule-breaking of Falcone? In short, what makes Batman a hero rather than a criminal? And with this conundrum, we step boldly into the territory of the ‘law question’.

Elsewhere Batman observes that ‘Jim Gordon is a good man. He and the police do the best they can with *limited resources*. But, Gotham City *needs* Batman’ [11: Ch 3]. Working outside the state system, Batman can be understood as a symbol for an idealised justice that cuts through the limitations and bureaucracy of the practical legal process. His symbolic presence on the streets of Gotham signifies the objective source of ‘true’ justice that law must aspire to and be measured against. But, Batman can also simply be seen as acting outside the legitimate authoritative system. He is a vigilante; it does not matter whether he is just or not. On this reading, the fact Batman is outside the legal system becomes symbolic of the divide between technical law and questions of morality and justice. These two possible readings broadly fit the two core theories in jurisprudence: positive and natural law.

Positive law argues that morality does not necessarily have any place in the assessment of whether something is law: the ‘law question’ and the ‘morality question’ are separate. Under the positive approach, law is an authoritative system of rules [see, for example, 9]. Natural law, meanwhile, holds that law is (or should be) a moral system. One could understand Batman from a positivist perspective, arguing that he represents a force for justice clearly separate from the system, thus demonstrating the logical separation of technical rules and morality. But this fails to address the fact not only that Batman exists because of the *failures* of the system, but that he is directly engaged in *improving and fixing* that system through his extra-legal activities. Indeed, as Cassandra Sharp notes more generally, ‘the superhero takes up the weight of exacting justice because the law is deficient’ [20: 358]—and Batman is no exception. Accordingly, despite possible positivist readings this section will argue that Batman’s vigilantism can more fruitfully be understood as an emanation of natural law—Batman is attempting to achieve his vision of justice, thus demonstrating that to which the system should be aspiring, what the system *should be*. As his origins show, if the system achieved this ‘true justice’, Batman would not exist. If they had been under sufficient protection from the state, Bruce’s parents would never have been the victim of violent crime, and Bruce would never have been left alone, filled with desires for vengeance that ultimately fuel his fight to protect the vulnerable population of Gotham.

## 2.1. Classical Natural Law

Natural law is the idea that law should be in line with some objective or universal standard, such as morality. But if we look further back into its classical origins a more nuanced understanding of natural law can be seen.

While the world may seem full of variation, chaos, diversity and disorder, both [Plato and Aristotle] asserted that a natural order lay behind or inherent within it, and this order, once its basic principles were known, could found man's social order. [15: 26]

Douzinas and Gearey trace the development of natural law theory from its classical origins to its (late) modern emanation in the idea of human rights. In its classical form as articulated by the Greeks, natural law did not appeal to some external 'objectivity' or divinity [see 5: 82]. Rather, the term 'natural' had a more technical philosophical meaning. Nature, for Greeks such as Aristotle, was linked with *telos*, or teleology: nature is shaped by the *ends or purposes* of things in existence, their potential for growth and fulfilment. The world is accordingly understood in terms of the ends to which the natural order of things progresses:

The end or *telos* of an entity or being is a state of existence at which disposition or potency reach fulfilment or perfection. The nature of the acorn, for example, is to become a mature oak, the purpose of the vine is to produce sweet tasting grapes. [5: 83]

And it is in relation to this kind of 'nature', based on the evidence of observation [see 5: 85], that justice is to be sought in the classical configuration of natural law [see also 15: 27].

This classical model is distinguished from the modern approach in that justice and law in Aristotle's thought were not separated out. Indeed, it was the same word ('*dikaion*' [5: 84]) that was used to describe both the process of justice, which was the seeking of the right outcome or state of affairs in a specific situation based upon the particular nature of that case, and the judgment of the third party who made their impartial determination of that outcome [5: 84]. Justice was thus both the process and the outcome, unique and specific to each case, that rendered things harmonious with the natural order [see 5: 85]. In this classical model, it is breaches of the natural order of things that need legal remedy; justice (*dikaion*) operates to bring the natural order back into place by determining a punishment or recompense and drawing a line under the conflict or situation at hand [5: 86].

Batman would not be able to exist in this classical world of jurisprudence: his embodiment of idealised and true justice would make no sense. In classical natural theory, justice is the same as law; it is the process by which disputes are resolved and the decision that enacts that resolution. In such a world, surely the only situation that would make sense would be if Batman were a judge, stepping in to bring the particular cases he encounters in line with the natural order. But it is important to note that Batman is ultimately a protector, not a judge. Cassandra Sharp argues that Batman's main function is a retributive one, linking him with notions of penal populism and the (fictional) fulfilment of communal desires for punishment [see 20]. While it may be true that some of what Batman does brings criminals to face retribution for their crimes, this is not his sole aim and he has strict limits on his capacity to dish out punishment himself. He seeks the security of the people of Gotham, not simply the

punishment of offenders. As can be seen towards the end of *The Long Halloween* [11: Ch 13], Batman resists the urge to dish out retributive violence in favour of handing the perpetrator in question back to the official system for processing (we will return to this in Section 3, below). These criminals may deserve punishment, but it is not Batman's place to give it.

If Batman were to fit classical natural law, he would need to be a representation of *telos*: a part of the pre-modern 'natural order' of Gotham, representing the purposive ends or trajectory of things. But as we will see, notwithstanding his penchant for the dramatics of cape and cowl, Batman is profoundly modern in the rational way he encounters reality and tries to achieve his protective justice.

## 2.2. Batman's Modernism

Modern forms of natural law were reconfigured from the teleology described above, via Christian concerns with God, to reliance upon reason as the source of justice. The development of theological thought through the Middle Ages, with thinkers like Augustine and Aquinas, introduced 'God' as the ultimate source of nature, thus replacing nature with God in the concept of natural law. Nature and the purpose of humanity were determined within God's plan for the universe; just and proper human laws needed to be in line with the natural laws of God's plan.<sup>1</sup> Thus, in the medieval period:

Chaos is kept at bay by the operation of a superior power ... Awe and wonder at the mystery of the cosmos and our roles in it find expression in institutionalised language provided by organised religion, linking awe and fear with a law underlying the structure of order. [15: 78-79]

This thinking established a hierarchical system, whereby laws and judgment were 'handed down from above' [5: 91]. Justice was to be compared and justified by its adherence to its true objective source in God; in order to be 'true law', it had to be in line with God's will. And with this we move into the notion of natural law as an objective model of 'true' justice that fallible human law must approximate. If Batman is an expression of natural law in *this* sense, then one might say that he is in effect a deity; a divine emanation of true justice to which our human justice should aspire. But unlike heroes such as Thor and Superman, Batman does not have a strong connection with the divine,<sup>2</sup> rather he has deeply human origins in the trauma that motivates him and his 'non-super' (albeit highly trained) physical capacities.

Through the Enlightenment, this deific source of justice was replaced with a more reasoned and quintessentially modern approach: namely, the social contract. Hobbes observed that we can never know the mysteries of God's will, thus it is we humans who are in charge of civil society—the challenge was to create a stable social order, and this was to be done using

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<sup>1</sup> See [15: 51-74] for an account of the development of this kind of natural law theory.

<sup>2</sup> But compare theological readings of Batman, such as [18].

reason [15: 79-88]. Hobbes argued that without any state or legal power, not only does injustice and immorality not exist as there is no law to define it, humanity would also generally act out of self interest and survival, giving rise to a state of perpetual war. This is what led Hobbes to his famous observation that in a ‘state of nature’ (a world where no governmental or judicial force existed) life would be nasty, brutish and short [see 15: 91-92]. It is only through agreement, Hobbes claimed, that peace and civil society can be established: we must agree to give up aspects of our natural, amoral freedom—providing others do the same—so that rules of morality and peace can be enforced and our lives can flourish (rather than being nasty and short).

The catch, however, was that in order for this agreement to hold a legalistic power was needed to enforce it, but this power could only exist through the agreement itself [15: 93-94]. Hobbes resolved this paradox through the fiction of the sovereign: a mortal deity into whom the power to govern human society, once given up by its individual members, resolves [15: 95-96]. It is this sovereign power that commands and enforces the rules of humanity, and should do so predictably and rationally if the structure of civil society is to hold [15: 96-98]. Ultimately reason underpins the state:

The essence of the state was to be rationally reconstructed from its valid elements and justified only by means of reasoned argument, based on its founding principles in the [social] contract; indeed *reason was declared the essence of the state*. [5: 96, emphasis added]

Social systems and their accompanying laws were justified not by appeal to God, but by free (albeit fictional) agreement and rational deduction [5: 94-97]. In this vision, law must be judged and justified in relation to the standards of reason: the objective, universally logical deductions of rational thought that must ground true justice.<sup>3</sup> As we will see, Batman adheres to reason as a means of finding justice but does not enact the Hobbesian sovereign—he is a counter-sovereign, stepping outside the civilised state and employing nasty and brutish means to rectify failures in the social contract where the state fails to adequately protect its citizens.

Contrary to Jason Bainbridge’s assertions that superheroes exist in opposition to rationality [see 1: 462-463], Batman’s dependence on reason and rationality is a significant dimension to his protective function. Superheroes’ opposition to rationality in Bainbridge’s reading stems from the generic trope that superheroes are ‘created’ through some ‘irrational’ event, ‘such as a divine act like genetic mutation or scientific accident that places their super nature at odds with the rationality of modernity’ [1: 462]. Batman, however, is merely a man, with no special powers beyond his own (highly trained) physical and mental capacities and immense wealth. Batman is a quintessentially modern guardian—it is reason and rational, logical deduction that will enable Batman to achieve justice, not some reliance on the natural order, the unknowable edicts of a deity, or supernatural abilities like those of Superman or Thor.

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<sup>3</sup> Lon Fuller’s moral account of law is an example of this kind of impetus, giving us a list of moral precepts based on reasoned logic to which a ‘true’ legal system must adhere [see 6].

We can see clear examples of this in the way Batman approaches specific criminal problems. In *Dark Victory*, for example, we see Batman rationally analysing evidence at a crime scene [10: 329]; we see him in the Batcave logically analysing evidence [10: 73]. At one point the threat of Batman's being wrong is raised; whilst Alfred says there is nothing bad about being wrong on occasion, Bruce Wayne understands that in his deep quest for justice, via his rational methods, 'Batman can't be' [10: 74]. Later, when Batman's fallibility finally surfaces, his weakness is portrayed as stemming from his tendency to work as a solitary bastion of justice and detection, not relying on anyone but himself. This fallibility exposes Batman's fear that he might not succeed, that he might be wrong—that his reason might fail. In his deep commitment to the deductive and explanatory powers of reason, Batman disregards Alfred's suggestion that his 'alone-ness' might be his problem, and attributes his current failings to Scarecrow's fear gas, which he believes has undermined his rational capacities (although Batman does recognise that it is through not being alone that he is able to recognise this injury) [10: 204-205]. Batman needs to be right, and he seeks his answers through an unfailing deployment of rational logic, otherwise his symbolic functions and the ideals he strives to uphold will fail. Although this symbolic dimension may seem to link Batman more with notions of inculcating hope and fear in the civil and criminal populations of Gotham, respectively, the point is that in order to bring about such wider public effects Batman must rely upon his rational methodologies. It is reason, in Batman's world, that brings truth and enables his justice to be attained.

When faced with the complex uncertainties of Gotham—the deep psychological traumas of his enemies, the gothic underworld of criminality—Batman clings to reason like a rope, keeping him tethered to the possibility of truth and justice. At times this 'rope' is not metaphorical, but literal. In *Dark Victory* [10: 99-103] we find a scene that is emblematic of Batman's wider reliance on the modern phenomenon of reason. The bulk of the scene involves Batman hunting Scarecrow through an abandoned toy factory and out into the snowy city. In terms of Batman's rationality the important aspect of the scene is the way the environment and chase are portrayed. The abandoned factory is shown in all its musty, dark, decaying detail; unnerving angles and sharp shadows give a sense of unease, of movement. Scarecrow is shown as a spindly fluid witch-like creature, spraying Batman with sickly-green gas that, again, is fluid, moving, bringing uncertainty to the surroundings. As the chase progresses outside, the environment changes to the snowy streets and piers by the river. The snow swirls, the jaunty angles continue, and the horrific character and dark shadows of Scarecrow's visual dimensions are juxtaposed with his textual recounting of childhood rhymes—the very form of the comic deepening the sense of unease. Batman navigates his way through this swirling, shifting environment. Scarecrow ends up in the icy river, and escapes, but Batman's reason wins out against the uncertainty represented in the scene's depictions. As we see in Fig. 1, the final panel of the scene, he clings to a rope—a literal rope, but also a rope that symbolically tethers him to rational logic and knowledge: tangible, solid evidence amidst the fluidity of life, a *fact* to deploy in his fight for certain justice.





**Fig. 1:** From: *Batman: Dark Victory*™ and © DC Comics [10: 103]

This argument for Batman's rationality may seem at odds with his presentation as a mythic bat-creature, donning cape and cowl to strike irrational fear into the heart of Gotham's criminal underworld. And indeed, there can be identified a deep tension between the rational and the irrational in Batman's existence. He is part terrifying bat, part rational detective. As Bainbridge identifies of Matt Murdock aka Daredevil, in Batman too there is a navigation of the conflicting ideals of irrational and rational modern justice, a reliance upon irrational means that takes the superhero outside rational modernity to attain their vision of 'true' justice [see 1: 471-476]. But despite Batman's deployment of irrational methods, it remains his dependence on the *rational* understanding of reality that he clings to in order to maintain both his fight for justice and his own sanity. This can be clearly seen in Grant Morrison and Dave McKean's darkly fluid work, *Arkham Asylum* [16], where the tensions between reason and madness in Batman's psyche play out within the walls of an Arkham Asylum overrun by its criminally insane 'patients'. It is his use of reason that enables Batman to understand and navigate the complex uncertainty of life, and this includes his own inner uncertainty and potential madness. Thus, as Miller and Mazzucchelli's depiction of his choice to specifically become Batman show [14: 20-22] (and as Nolan's cinematic adaptation draws out even further [17]), he rationalises his use of the dramatic costume as a logical means to scare criminals and become something more than just a madman in a cape. As Sharp explains, 'Bruce [Wayne] pointedly chooses the symbol of the bat as the mechanism through which he will instil fear and deal out his particular brand of justice' [20: 364].

Thus, to a significant degree, Batman can be read as an emanation of modern natural law. He is a response to the failures of law, an ideal both independent from the limited and potentially corrupt human legal system and what that system should be achieving. Although at times he relies on irrational means, for Batman it is reason that brings certainty and understanding to the chaos and fluidity of life (including his own life). It is his rational deduction that enables him to move inexorably closer to the justice he seeks. As for Hobbes, it is reason that pushes back the chaos of nature, of uncivilised humanity. But whilst Hobbes argued that through reason we could establish the (fictional) sovereign to bring order to the savage 'state of nature', Batman turns this around. Batman operates as a kind of 'counter-sovereign', stepping outside the boundaries of civilisation in order to fix or supplement the legal process. Where the supposedly rational state systems fail, where justice is not achieved and citizens are not

protected in the way the social contract states they should be, Batman moves beyond the limits of the sovereign state, back into a state of nature, taking on his own rational sovereignty in order to control life where official systems cannot. In doing so, Batman also gives up the protection of the state; he literally becomes an outlaw—but a heroic one, sacrificing his own safety in order to bring safety to others. Life in Gotham may be nasty and brutish, with criminals running the streets and all levels of government and police seeping with corruption, but through his application of logic and deduction, his ratiocentric detective activities, and his reasoned use of fear, threat and physical force, Batman clears out the rot, incarcerates criminals off the streets, and gradually tries to turn Gotham into a truly just society. He re-civilises Gotham (and arguably, through the rituals of his rational deduction in the face of life's uncertainties, himself) in a way Hobbes would be proud of—through the application of reason.

### **3. Justice and Vengeance**

#### **3.1. Batman the Nasty Brute**

Across the narrative of *Year One* [14] we see Batman's general jurisprudential trajectory played out: from corruption to purity, from despair to hope, from crime to justice. From the opening iconic image of the young Bruce kneeling amidst his murdered parents, to the final full-page image of the fully-fledged Batman leaping out of the page in dynamic attack, we see this transformation take place. This same sense of growing hope that justice might be attainable can be seen in the depictions of Jim Gordon, then a lieutenant newly moved to Gotham. The opening scene shows Gordon arriving in Gotham; he looks uneasy and defeated, describing Gotham as 'Hell', an amalgamation of streets and buildings that 'fool you into thinking it's civilised' when it is anything but [14: 2]. This same scene is intercut with Bruce Wayne arriving back in Gotham: while Gordon arrives by train, lamenting the social depravation such a route exposes, Wayne admonishes himself for taking the comfortable option of air travel that distances him from 'the enemy' [see 14: 2]. By the end of the work, Gordon is standing on a rooftop awaiting Batman's arrival, smug and confident in their ability together to keep Gotham safe—to make the city just [see 14: 96].

Traversing this metanarrative of crime to justice, *Year One* tells of Batman's origins and establishment. It moves from a world without Batman—a Gotham riddled with crime, where Bruce Wayne's parents can be murdered in front of him on the street—to a world protected and policed by the swooping presence of the Dark Knight. In a key scene early in the work, Batman makes a move against the corrupt officials at the top of Gotham's justice system. The incumbent Gotham City Police Commissioner, Gillian Loeb, is having a lavish meal with various city officials, discussing the potential problem the vigilante figure of Batman might pose to their powerful interests, when Batman himself throws a smoke bomb through the window, cuts the lights, and blows out the wall, making a dramatic entrance designed to strike fear into the hearts of his corrupt enemies (see Fig. 2). After telling them they have eaten well, insinuating the greed and gluttony they enjoy at the expense of the masses that

inhabit Gotham unprotected, he declares war on their regime: ‘You have eaten Gotham’s wealth. Its spirit. Your feast is nearly over ... None of you are safe’ [14: 38].



**Fig. 2:** From: *Batman: Year One* <sup>TM</sup> and © DC Comics [14: 38]

In the context of the wider trajectory of the work, here we see Batman literally breaking down the walls protecting the rich and powerful, opening them up to the threat of being brought to his ‘true’ justice. Although he may break down the *literal* walls protecting these ‘bad apples’, Batman’s more general function is to police the *conceptual* walls at the boundaries of the civilised state: he climbs over them rather than breaks them down, and protects them as the Dark Knight. In this example, Batman is visually depicted as a dark, spectral presence, poised for attack: an other, threatening the current order. And this visuality undermines the ostensibly polite text, rendering it snide and threatening. Justice here, in the hands of Batman, becomes something dangerous, some threat of retributive harm, a mean and disruptive force aimed at the crooked status quo. Indeed, as Sharp says:

By constituting himself as an agent of violence and retribution, skirting the periphery of the rule of law, Batman’s actions clearly indicate that central to his ideology of justice is the notion of just desert. [20: 373]

But Batman’s justice here is one that roots out corruption, that cleanses the human system, removing the bad apples that have twisted or disregarded the system to their own ends. Batman, an external force, beyond the rules and limits of law, beyond the confines of the civilised state, judges the system as broken, and swoops in to fix that system—to make it capable of *protecting* Gotham’s inhabitants, and thus in line with his view of what is ‘just’. Accordingly (and against Sharp), Batman is more than merely retributive. But the means

Batman uses are particularly violent ones, including the threat of harm and the destruction of property. These ‘nasty and brutish’ features of Batman’s violent activity links with his stepping outside of safe civilisation as a counter-sovereign. Indeed, elsewhere in *Year One* we see Batman literally fighting officers of the ‘official’ law, using violence against the state in the name of justice [see 14: 62]. We see Batman using physical harm to elicit information from a suspect—activity that can be classified as torture [14: 78]. Indeed, examples of Batman’s violent conduct are commonplace: he physically attacks Two Face [10: 208], he threatens and assaults Alberto Falcone in his own home [10: 108-109], he strings up Riddler from a building to get information [10: 68-70], and he physically beats down an assembled group of his enemies [11: Ch 13]—examples of his physically fighting criminals are too numerous to list comprehensively. But how can this violence be understood as ‘justice’ rather than ‘crime’?

Harm theory suggests that doing harm to others is a key aspect of human conduct that should be prevented through the sanctions of criminal law, thus justifying state intervention in the lives of citizens.<sup>4</sup> A high profile example of harming another is doing violence to them. Electrocution, being hit with a stick, tying someone up against their will—great examples of ‘harming another’. Yet, in order to bring about the prevention or reduction of such harm-doing, the justice system employs the use of force and coercion and other tactics of violence. For example, electrocuting someone with a Taser, or using a nightstick, or binding someone with handcuffs. As Robert Cover reminds us, the interpretative application of legal rules (such as in a judgement) ultimately determines if someone will suffer violence (that is, in Cover’s terms, ‘pain and death’) [3]. This may not necessarily undermine law’s legitimacy, as Cover admits; it is simply that he does ‘not wish us to pretend that we talk our prisoners into jail’ [3: 211]. But when done by the state, for the reasonable ends of reducing harm in society, the violent production of pain and suffering is generally seen as legitimate—just, even.<sup>5</sup>

It is important to note that there is much debate on the term ‘violence’ and how it relates to law. Reading Sarat and Kearne’s work on violence, for example, Stephen Skinner identifies four possible forms of ‘law’s violence’: foundational, instrumental, interpretive, and limiting. Firstly, violence is ‘foundational’ where it refers to the violence that establishes the state (revolution, conquest, and so on) [23: 139-140]. Secondly, it is ‘instrumental’ in relation to the legal institution’s use of physical coercions and punishments [23: 140-141]. Thirdly, violence is ‘interpretive’ where there is conceptual trauma in the way the law constructs its subjects in a limited or incomplete way [23: 141-142]. Finally, violence is also ‘limiting’, which refers to the illegitimate violence beyond the limits of law that legal regulation seeks to control (such as the violence of criminality) [see 23: 142-143]. Moreover:

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<sup>4</sup> For a detailed examination of the harm principle in law, see [22: 35-88].

<sup>5</sup> It may be possible to simply rely on law’s legitimisation of violence, and hold that legitimate violence is that which is authorised by the state [see 26: 66]. But to say legitimate action is that which is deemed to be legitimate is unhelpfully circular, and ignores the question of what grounds or justifies that authorisation. Such an approach would also dismiss Batman as a mere vigilante, overlooking his potential nature as a resistant ‘natural’ force against problematic and failing state systems.

Just as in the well known adage, ‘one person’s terrorist is another’s freedom fighter,’ so the sense of contestation, the perception of ‘violence’ and use of the term itself will vary according to perspective. [23: 147]

The violence of Batman focused on in this paper is predominantly the physical coercion utilised by Batman in his crime-fighting activity—the very real pain he inflicts and threatens as he ‘cleans up the streets’. As Batman exists on the boundary between legitimate and illegitimate violence, as both illegal vigilante and bastion of ‘true’ justice beyond human law, this violence traverses the second and fourth categories noted above (‘instrumental’ violence and the illegitimate violence beyond law’s limits). Accordingly, the central question becomes one of Batman’s legitimacy as a fighter for justice, rather than the particular violence of his methods.

A key question in Batman’s justice activities is that of vengeance—of doing harm to another as retaliation or response for some harm done by that other. As Rachel Dawes reminds us in Nolan’s cinematic *Batman Begins*, vengeance and justice are not the same thing [17; see also 18: 255]. Indeed, vengeance and justice have been distinguished with respect to the power of a sovereign to ‘short circuit’ the cyclical nature of revenge. All acts of revenge are ultimately reprisals for some previous violent act, and necessarily give rise to further acts of revenge; it is only the transcendent nature of law that can perform ‘legitimate’ violence to quell the need for vengeful reprisals within society [4: 303-305]. This same notion can be seen in *The Long Halloween*, when Batman finally believes he has found the main perpetrator behind the crimes that drive the overall narrative and starts to enact brutal, vengeful violence upon them. But rather than continuing his assault, Batman realises that in order to remain legitimate—to be a force for justice—he needs to be able to dish out the appropriate punishment, and that means handing the villains over to the state police for arrest, trial, and sentencing [see 11: Ch 13]. It is not Batman’s place to be judge and jury—he is a protector, not a punisher.

However, the distinction between what is ‘legitimate’ and what is ‘illegitimate’ violence can be fuzzy [4: 305-306]. As Culbert notes, although the state may try to monopolise the use of violence to remove avenues for revenge, this monopoly is arguably imperfect [4: 310]. Moreover, Culbert is deeply critical of a cyclical model of revenge, arguing that the relational nature of society means any human action, including violent action, cannot be bounded in a small, closed cycle of conduct. Revenge—as human action—is more changeable, expansive and unbounded than a simple cyclical model indicates; any action retains the potential to generate something new and unexpected [4: 305-312]. Similarly concerned with the unbalancing of retributive justice, Timothy Peters’s analysis of the cinematic *Batman Begins* argues that Batman transcends the endless cycle that justice typically represents. Justice is a cosmic balance, Peters argues, grounded in the notion of retribution as a weighed and ‘fitted’ response to a wrongdoing or harm [18: 247-251]. But in Nolan’s filmic depiction, Peters argues that Batman refuses to replicate the endless cycle of balance through retributive punishment, instead opting for the hope of forgiveness and future rehabilitation for Gotham and its citizens [18]. He may be violent, but ultimately his violence is outside the endless balance of good versus evil, and of retributive reprisals, enabling the possibility of producing

a new and better Gotham. We thus begin to see the idea of doing violence in a different way, or towards alternative ends, that brings what would otherwise be (cyclic) vengeance into the realm of the just.

### 3.2. Transcending Vengeance

Discussing the role of violence in law, Christoph Menke argues that there is a deep and irresolvable tension at play: that on the one hand law aims to reduce and prevent violence, but on the other is a perpetuator of violence itself. On the one hand, we can legitimise the use of violence (e.g. through legal processes such as a fair trial) and thus dissolve its violent nature, turning it into justified, measured state action; on the other hand, we can critique law for its inherently violent nature that cannot be removed through such processes. Menke argues that both perspectives are true, and we cannot simply resolve debate to either side alone—they are paradoxically entwined [see 12: 1-2]. Through his analysis of Greek tragedy, he argues that the key distinction between ‘revenge’ and ‘law’ is that law is general:

Revenge only knows violations committed by one against the other ... Law, on the other hand, is able to judge impartially because it judges the deeds of individuals in the light of general rules. [12: 4-5]

Although different from the violence of Batman, a significant element of the violence committed by law is conceptual. As was noted above, law is violent in both its physical consequences and its conceptual interpretation [see 23: 138-139]. By judging someone the law forces that person into its legal determination, and this judging is done under general, abstract rules—the individual is de-subjectivised through the force of law [12: 7]. This conceptual violence is symbolic of various kinds of physical coercion and violence enacted by the state, such as police restraint and imprisonment. Thus, paradoxically, it is law’s abstract or general nature that both distinguishes it from revenge and enacts its (conceptual) violence [12: 8]. What this analysis also brings out is that in moving beyond the personal, in doing violence towards general ends, we move from vengeance to justice.

A move beyond illegitimate violence can be seen in Batman’s attempt to make Gotham just. Cover makes a connection between martyrdom and the violence of law. Martyrs, he observes, suffer extremes of pain (and indeed death) in the ardent hope that their own ‘good’ law will prevail over the ‘bad’ law of the tyrant that inflicts such pain upon them.

Martyrdom is an extreme form of resistance to domination. As such it reminds us that the normative world-building that constitutes ‘Law’ is never just a mental or spiritual act. A legal world is built only to the extent that there are commitments that place bodies on the line. [3: 207-208]

And Batman, in stepping outside the official law, sacrifices the protection he gets from that law, placing his body and the bodies of others on the line in his desire to bring justice to Gotham. In other words, to build a new legal order that is just, Batman imagines an idealised

legal world different from the existing corruption of the state, and lives with a willingness to suffer and create pain to bring that imagined ideal into existence [see 3: 208]. In doing so, Batman asserts his own sovereignty—as we saw above, a counter-sovereignty that is in tension with the sovereignty of the state. Such a move may be true of vigilantism generally, as Cassandra Sharp has identified: ‘based on an ideology of popular sovereignty, instances of vigilantism are justified on the basis that exceptional circumstances allow the people to put aside the rule of law’ [20: 360]. But such activity is not based on the kind of state of exception identified by Agamben:<sup>6</sup> rather than justifying exceptional state actions, superhero vigilantism relies on turning *away* from the state [see 20: 360].

In his detailed analysis of the privatisation of the three key areas of state force (imprisonment, policing and the military), Clifford Rosky notes that in recent decades ‘liberal states have started to turn away from—or at least reconsider—the old adage that the state must monopolize force’ [19: 913]. It is not a new phenomenon for elements of what are today considered the state’s criminal justice system to be undertaken by private parties [19: 894–895], but since the evolution of the modern state such activities as capturing and punishing criminals have become very much *public*, or state, concerns. But the distinction between the two in terms of who should be in control (state or citizen) is surprisingly fluid in many cases, notably in the context most relevant to our concern with Batman: the policing of criminal activity.

Speaking very broadly, public police are still more likely to use force, make arrests, detain suspects, and conduct searches than private police ... [but] it is more often cultural norms, rather than legal rules, that limit the authority of the public and private police and mark the boundaries between them. [19: 899]

In England and Wales the power of arrest is not unique to state-sanctioned police officers, but can be invoked by any private citizen [see 25 :115]. Rosky also notes the existence of certain ‘private’ realms (such as our physical integrity) in which it is acceptable for us to ‘police’ ourselves, for example through self-defence. As Smith and Alpert also note, the ‘police have the right to use force to apprehend suspects, while citizens have the right to use force to protect themselves and/or to execute a citizens’ arrest’ [24: 140]. But whilst police officers have sophisticated legal frameworks, support networks, and training regimes to help them navigate their use of force, private citizens only need to rely on whether their reaction to a crime is deemed ‘reasonable’ [24].<sup>7</sup> Importantly, Rosky observes how these private realms circumscribe areas of private rights where we retain the prerogative as to whether or not we involve the (public) police [19: 1022–1023]. Similarly, as Sharp argues, part of what

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<sup>6</sup> But, for discussion on the associations between Batman and Obama in the context of Agamben’s state of exception, see [1].

<sup>7</sup> Smith and Alpert [24] focus on the US context, but in UK law the requirement of reasonableness in self-defence cases is enshrined in caselaw such as *R v Williams* [1984] 78 CR APP R 276. Although one’s response need not be ‘weighed to a nicety’ in the heat of the moment (*Palmer v The Queen* [1971] AC 814), it still needs to be broadly reasonable and not excessive. The Police and Criminal Evidence Act 1984 also requires that a citizen arrest is grounded in reasonable suspicion and that it would not be reasonable to allow a police officer to effect it instead (s24A(3)).



underpins the move to vigilantism in the superhero is the failure of the state system of law—hence Batman’s turn to a counter-sovereignty that is in tension with that of the state.

The [superhero] vigilante autocratically assumes responsibility for societal power and authority on the basis that not only do the circumstances warrant such exceptional action, but that popular sovereignty demands it ... the legal system’s inability to cope or deal adequately with crime is all the justification needed. [20: 360]

And this justification ultimately stems from the wider community—from the people: where Gotham no longer protects its citizens under the rule of law, the necessity for Batman emerges from the community’s inability to stand up for itself and authorises his counter-sovereign activity [20: 365].

The distinction between legitimate citizen policing and private acts of vengeance goes beyond simply who it is acting: just because a policing activity is done by a private citizen it is not automatically illegitimate. The permitting of citizen policing does not give private individuals a license to commit violent vengeance or seek retaliation for harm—such excessive activity would not likely be ‘reasonable’. The police’s use of force is generally legitimated by the authority they derive from the rational state’s function of protecting citizens from various types of harm, including pain and death. As we have seen, their force is arguable reasonable because it is balanced against the outlawed harm. Batman’s use of force is legitimised as ‘reasonable’ in a similar way: he is needed to counter-act harms that the state is either perpetrating (via corruption) or unable to prevent. The license to citizen policing permits individuals like Batman to fulfil or protect what is ultimately a public interest—justice—where state forces may be unable or inappropriate to do so. Indeed, as Sir Robert Peel himself framed it:

The police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence. [24: 136]

Thus, Batman’s use of force arguably becomes reasonable because it fills the gaps left by the imperfect state police. Accordingly, the capacity for individuals to police their own private interests does not answer the question of the line between justice and vengeance; however it does suggest that the difference between the two may be in the *public or private* nature of the activity or interest (but not that of the individual acting).

### 3.3. From Private Trauma to Public Justice

The central element in Batman’s history (and his psychology and personal mythology) that fuels his desire to bring justice to the streets of Gotham is the murder of his parents. Note the recurring, iconic image of the young Bruce Wayne crouched over the bodies of his parents



[see for example 14: frontispiece; 10: 18]; note also Bruce visiting his parents' graves throughout his adulthood [14: 6; 10: 260] and in particular the covers to Chapters 8 and 9 of *The Long Halloween* [11: Chs 8-9], one depicting him visiting a grave as child, the other as an adult, showing clearly the lasting impact of his parents' murder. And beyond the visual, there are many references in Batman's narration to the 'promise' he made on the death of his parents to restore justice to Gotham [for example 14: 20-22; 11: Ch 1, Ch 13; 10: 300-302, 388]. The death of Bruce Wayne's parents forms a complex hub for Batman's crime fighting activity. It is a deeply private trauma, occurring in Batman's distant past, but still actively shaping and fuelling his current fight for justice. Batman serves public justice, but is animated by a very private pain.

By reconfiguring his private trauma and desire for personal vengeance into a wider public function of protecting others, Batman also reconfigures this vengeance into a force for justice. It is by operating in the public sphere, by transcending his personal pain and working to protect others in general, that he moves from the private to the public—and concomitantly from (unreasonable) revenge to (reasonable) justice. This quintessential aspect to the logic of Batman can be seen in Fig. 3, taken from Loeb and Sale's *Dark Victory* [10]. In order to fully appreciate the significance of this panel, Batman's narration from the pages preceding it should be considered:

About a year after my parents were murdered, I started to dream about catching their killer. How I would chase him. Relentlessly. Until he would run into a blind alley. He would try and fire his gun—but it would be empty. Impotent. I would move in closer. Closer. His face would be filled with fear. Like mine was when he pointed the gun at me after shooting my parents. But, I always woke up before the dream ended... ...and to this day I have yet to find my parents' killer. [10: 300-301]

This monologue recounting the desire for vengeance Bruce Wayne felt after his parents' murder, his unresolved dream of retribution, is woven over the depiction of the young Dick Grayson (subsequently Batman's sidekick Robin) chasing down Anthony 'Fats' Zucco, the man who killed Grayson's parents. Batman's grey narrative boxes overlay the visual action sequence and verbal interaction between Grayson and his parents' killer: the comics form is exploited in order to make overt the connection between Grayson's experience as a victim of criminality and that of Batman. The greyness of Batman's narrative boxes, symbolising his loneliness, also connects with the name of the boy: 'Grayson'. They are joined by their shared trauma.

As Zucco lies dead at Batman's and Grayson's feet, having suffered a heart attack following Grayson's relentless pursuit of him through the streets of Gotham, Fig. 3 effects an intricate layering of tensions that exposes the complexity of Batman's relationship with justice. On one level we have the huge, dark shape of Batman, his looming presence as guardian of justice—the Dark Knight, fighting for the safety and security of the innocent citizens of Gotham city. This dark symbol represents true justice, Batman's ideal of what the law and the

criminal justice system should attain and protect—the darkness arguably symbolic of Batman’s use of nasty and brutish violence as a counter-sovereign (as well as his more practical tendency to lurk in the shadows in his stealthy pursuit of criminals). But this idealised justice of Batman, this truly public ideal, is in tension with the deeply private pain that fuels him. The private and personal trauma that is captured in the figure of Dick Grayson, the young boy who (like Bruce) had his parents murdered. The ideal exists because of some very visceral and real historical event; it is not an abstract and objective thing, but merely presents itself as such.



**Fig. 3:** From: *Batman: Dark Victory* <sup>TM</sup> and © DC Comics [10: 302]

On another level, Batman—the huge protective figure of justice—puts his strong and securing arm around Grayson, the small, weak and innocent victim. Thus we have a second tension or juxtaposition, between (protective) strength and (protected) weakness. But this is in further tension with the profound link that now exists between Grayson and Batman. Grayson never actually managed to dish out vengeful violence upon Zucco, as Zucco died from his own heart condition before the violent hands of Grayson could reach him. And, now dead, Zucco can never suffer full retaliation. Like Batman’s, Grayson’s revenge remains

inchoate, unfulfilled. The comics form is employed in this panel to augment this: Batman's textual narration highlights the unresolved nature of his vengeance, linking it with Grayson's attempt to resolve his own vengeance signified by the body of Zucco—a body that has actually died of 'natural causes', albeit as a result of Grayson's pursuit of him. Thus Grayson's pain does not dissipate upon Zucco's death: from his demeanour it can clearly be seen that he does not feel the release from grief. His revenge is frustrated, incomplete, and his pain remains—like Batman's. The two characters are reconciled in their shared trauma, their shared grief. This can be seen in the overall conclusion to *Dark Victory*, where Batman admits that he sees in Grayson 'the chance to help him cope with own loss... and guide him into being a better man for it' [10: 387]. The two are united, a team, against the pain that evil causes in the world, against the trauma of criminality that shaped their pasts. But this, importantly, is not in the style of vengeance—both are unable to be vengeful because the object of their vengeance is unattainable. These two are 'better men' than that; their fight is not one for self gratification, but for the public good—for justice.

As we have seen, it is with this move towards a generalised fight against harm within Gotham, towards protecting others from experiencing the pain that he has experienced, that Batman's extra-legal activity transcends its vengeful origins and becomes just. The irony that again layers on top of this is that Batman and Grayson's fight is ultimately a personal one, fuelled by their shared yet deeply private pain. Natural law suggests an objective or external order of justice to which our human laws should aspire. But perhaps ultimately, for all of law's aspiration towards such a true morality, the administration of justice is something that is done by and to *humans*. Everyday people, working with their own private motivations and hopes. Indeed, as Peters reminds us through his reading of Nolan's Rachel Dawes:

...she is perfectly aware that the system requires more than simply the law. She argues that, in order for there to be justice, there is the need of 'good people' like Wayne's parents who will 'stand against injustice'... The law is dependent upon those instituting and supporting it. [18: 255]

Justice may be a public concern, but it is sought not by public forces of law, but by real people living their own *private* experiences within public structures. Ultimately, what the jurisprudential dimensions of Batman show us is how actors in the justice system are nodes of privacy enfolded and embedded within wider public systems of judgment and punishment. By existing upon the complex boundary of the public and the private in his fight for justice, Batman reminds us of this fact, and exposes some of the difficulties inherent in articulating an impartial or just system that is able to transcend the human urge for revenge.

#### **4. Batman and Resistance**

On one level, natural law can be understood as trying and to seek justice through comparison with some external or objective source (be it nature, God, or reason). This clearly has significant problems in terms of attaining settled universal rules, particularly in our late modern world of plurality and socio-cultural diversity. But despite this, indeed *because* of

this (problematic) idea that true morality or justice can be found ‘out there’ somewhere, natural law acts as a form of resistance against potentially unjust systems. Whenever the substantive law produces something approaching injustice, natural law—or at least the *idea* of natural law—can step in and say, ‘hold on, that’s wrong’. Whether this ‘wrongness’ is objectively verifiable or rationally deducible is of course open for debate—but the resistance still occurs. In its most profound emanation in current society (that we have ‘natural’, inviolable human rights), the thinking of natural law offers great protection to individuals against the mighty power of the state. The substantive content of our ‘natural rights’ may be open to question and deconstruction, and other problematising analyses that undermine the notion that settled objective morality can be discovered, but their existence clearly attempts to reset the balance of power between citizen and government.

This is what allies Batman most strongly with natural law: he is something beyond limited human law, beyond the limited resources of an imperfect system—he is a force of reason, protecting the innocent from the power of both criminals and corrupt officials. He exists as a reaction to the deficiencies in the existing justice system, a counter-sovereign stepping outside official avenues to seek the protection of the innocent where the state breaches the social contract and does not give this protection itself. In the world of Gotham, the police cannot protect individuals adequately, for the system is either filled with bribery, fraud, misconduct, and a whole array of bad apples, or is simply limited in its practical capabilities. This corruption is symbolic of the general idea of the failure of the criminal justice system to achieve its stated aims: if the police cannot protect fully, then citizens are vulnerable not only to the violent forces of criminality, but to the long and unchecked arm of the state. Batman is a force of resistance, balancing the corrupted power of the state against the citizens of Gotham that he perceives as being otherwise defenceless, and enacting protection from criminal harm where state systems fail.

In our non-fiction, non-superhero world, Batman exists as a complex symbol, imbued with the force of resistance—an emanation of citizen power against the state, a check against oppression and injustice, a force that not only fills the gaps left by an imperfect and failing criminal justice bureaucracy, but fights and attempts to rectify that failure. But more than this, the symbol of the Batman is also a reminder of the deeply personal traumas and values that are at work in the complex machinery of justice—the everyday folks who populate the system in various capacities—and how that system, rightly or wrongly, transcends those personal dimensions in order to attain its legitimacy as a system of justice.

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